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In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 780

THE DAVIES-YOUNG SOAP COMPANY,
Petitioner,

v.

NU-PRO MANUFACTURING COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Eighth Circuit.

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In the Supreme Court of the United States

OCTOBER TERM, 1959.

No.

THE DAVIES-YOUNG SOAP COMPANY,

Petitioner,

v.

NU-PRO MANUFACTURING COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI To the United States Court of Appeals For the Eighth Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, which was entered in the above entitled case on December 21, 1959.

CITATIONS TO OPINIONS BELOW.

The opinion of the Court of Appeals for the Eighth Circuit, printed in the appendix hereto at page 11, is reported in 124 U. S. P. Q. 24. The opinion of the district court (written in the form of a letter) is unreported and is printed in the appendix hereto at page 16.

JURISDICTION.

The Judgment of the Court of Appeals was entered on December 21, 1959, and is printed in the appendix at page 19. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

QUESTION PRESENTED.

Whether a court may hold a patent invalid by reason of indefiniteness of the chemical claim when the terms of the chemical claim are explained in the specifications?

STATUTE INVOLVED.

The statute involved in this case is 35 U. S. C., § 112, which provides:

> "The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.
>
> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
>
> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof." July 19, 1952, c. 950, § 1, 66 Stat. 798.

THE PUBLIC INTEREST.

We desire to emphasize the public interest for the following reason: The benefit of the specification in its more elaborate disclosure than in the claim is for the public benefit to clarify and define the language and the meaning of the terms used in the claim, while the claim is for the benefit of the monopoly of the inventor and must be

limited and interpreted by the definition in the specification. We resort to the specification to define the terms used in the claim if any question arises as to the same terms in the claim as in the specification which is the case here. If the specification explains, as here, the meaning of the words used in the claim, that limits the claim and explains precisely what is meant. *Graver Mfg. Co. v. Linde Co.*, 336 U. S. 271, 276, 277. A claim, therefore, that is not interpreted in the light of the specification may do a grave disservice to the public because the limitations described in the specification and its interpretation of the invention are essential in interpreting, understanding and limiting the claim.

The complete divorce by the court below of these two essential parts of a patent opens the door for broadening claims without the limitations of the specification on which the layman, reading the patent, usually rely primarily for an understanding of the soope of the invention.

The court below held contra that the claim does not benefit from the specification and must stand alone.

STATEMENT OF THE CASE.

The petitioner sued the respondent in the United States District Court for the Eastern District of Missouri for infringement of Trusler Patent No. 2,729,576, entitled "METHOD OF DRY CLEANING FABRIC AND SIMULTANEOUSLY RENDERING THE SAME ANTISTATIC." The new long term antistatic condition prevents the fabric from attracting lint and dirt and from adhering to the bodies of the wearers, a new and long sought result. After Trusler's invention, the process was immediately adopted by thousands of dry cleaners. At the time this case was tried in the District Court, it was being used by 3500 of petitioner's dry cleaning customers.

The patent involved in this action (U. S. Patent No. 2,729,576) contains a single claim with mathematical percentages covering:

> "The method of dry cleaning fabrics and clothing and simultaneously rendering the same anti-static, which comprises washing the fabric and clothing with dry cleaning solvent having from [redacted] to 10% by weight of a detergent dissolved therein, and then rinsing the fabric and clothing with a dry cleaning solvent having from 0.02% to 5.0% by weight of an anti-static agent dissolved therein, the anti-static agent being applied to the fabric and clothing in the presence of detergent carried thereby from the washing."

The District Court held the patent was invalid because "it fails particularly to point out and distinctly to claim the subject matter regarded as the invention," as required by 35 U. S. C., § 112. That decision was affirmed by the Court of Appeals on the new ground, "It is well established that the claim, and not the specification, is the measure of the inventive monopoly, and deficiencies of the former cannot be cured by any terms of the latter," thus discarding the normal use of the specification to explain the terms in the claim. In addition, the claim itself is mathematically expressed in precise percentages.

This cause states the rule we seek to have you enforce, i.e. that to prevent others from claiming the invention, you use the specification to restrict the claim to the true meaning set forth in the specification. In support of this position, we quote from this court in *Graver Mfg. Co. v. Linde Co.*, 366 U. S. 271, 276, 277, where the court held ambiguity in the claim could justify resort to the specification.

The Court said:

> "* * * While the cases more often have dealt with efforts to resort to specifications to expand claims, it is clear that the latter fail equally to per-

form their function as a measure of the grant when they overclaim the invention. When they do so to the point of invalidity and are free from ambiguity which might justify resort to the specifications, we agree with the District Court that they are not to be saved because the latter are less inclusive."

This decision destroys the very heart of the patent system of the United States, which constitutes the industrial life blood of American industry depending upon patents for protection of the great investments in this age of research and our world competition. No claim without the benefit of its specification could take on its full meaning and live without it, no more than you could have a marriage without a bride. The duality of the disclosure in the specification and the claim is obvious for no claim could be as explanatory as the specification, and no specification could be as short as a claim, if it was to make a full and workable disclosure. This decision destroys the very heart of the patent system of the United States upon which our industrial organizations depend for temporary protection of our heavy investments in new developments until launched for the public use. Nothing could do more destruction to our continuing expansion of tremendous research achievements than to allow this decision to stand that the specification has no relationship to the claim for the limitations of the claim can only be expressed and described in full by the specification, and the scope of the claim only becomes understandable against the background of the specification.

Counsel know full well, from arguing cases in this court during the last 31 years, of the sound reluctance to add to your burdens by ordering up more cases, but the instant case is in a different category as the decision below destroys one of the foundations of our industrial prosperity.

This court and all of the courts of appeal have held contra to the instant decision, but your decisions and the decisions in other circuits will not help this litigant unless you consent to lift this case out of the Eighth Circuit and see that justice is done in accordance with your own decisions and that of every other circuit.

The claim of the patent describes the steps of the process and gives the precise percentages of chemicals to be used. The only terms of the claim involved are "detergent" and "antistatic agent." Those well known terms, in common use in many industries, are defined in the specifications of the patent. **But the Court of Appeals refused to consider the specifications in interpreting the claims.**

The Court said: "It is well established that the claim, and not the specifications, is the measure of the inventive monopoly and deficiencies of the former cannot be cured by any terms of the latter." But that is not the point.

The public interest is gravely injured by this decision that the specification, the part that defines for the public what the inventor has done for the art, is to be disregarded; the specification is the public's reward for the inventors disclosure of the invention, the claims are the inventor's reward for discovering the invention. To deny that a claim cannot be read in the light of the specification gravely affects the public interest which demands that the claim must be limited and interpreted by the specification for the public interest and protection.

ARGUMENT.

1. The Decision by the Court of Appeals For the Eighth Circuit is in Conflict With Decisions of This Court and Other Courts of Appeals.

The claim[1] of the patent involved in this case states the precise mathematical percentages of the components ("detergents" and "antistatic agent") which are to be used in the method of rendering fabrics antistatic as claimed by the patent.

The terms "detergent" and "antistatic agent" are explained in the specifications of the patent. The Court of Appeals erroneously refused to interpret the claim in the light of the specifications, saying: "It is well established that the claim, and not the specifications, is the measure of the inventive monopoly and deficiencies of the former cannot be cured by any terms of the latter."

Unless the specification is so used, it has no use.

Although the scope of every patent is limited to the invention described in the claims, the claims must be read in the light of the specifications. *Motion Picture Patents Co. v. Universal Film Co.*, 243 U. S. 502 (1917). This Court has consistently held that the terms of a patent claim are understood to refer to and be explained by the specifications.[2] Otherwise, the specification has no use.

All of the other courts of appeals have also held that the claims of a patent must be construed in the light of the specifications.[3]

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[1] See page 4, *supra*.

[2] *American Fruit Growers, Inc. v. Brogdex Co.*, 283 U. S. 1, 6 (1931); *Temco Electric Motor Co. v. Apco Mfg. Co.*, 275 U. S. 319, 330 (1928); *Carnegie Steel Co. v. Cambria Iron Co.*, 185 U. S. 403, 432 (1902).

[3] *Holtzer-Cabot Electric Co. v. Standard Electric Time Co.*, 111 F. (2d) 71 (CCA 1, 1940); *National Development Co. v. Law-*

(Continued on following page.)

In holding the petitioner's patent invalid by reason of indefiniteness, the Court of Appeals refused to consider the specifications in construing the claim. Its decision is, therefore, in conflict with all of the above decisions.

2. Citations in the Eighth Circuit Court of Appeals Opinion do not Support its Position.

The cases cited by the Court of Appeals do not support its decision. Those cases merely hold that the scope of a patent is determined by the claims. But the claims must be construed in the light of the specifications. That rule was recognized in the cases cited by the Court of Appeals. E.g., in *Graver Mfg. Co. v. Linde*, 336 U. S. 271, 277 (1949) the Court recognized that ambiguity in a patent

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(Continued from preceding page.)

son-Porter Shoe Machinery Corp., 129 F. (2d) 255 (CCA 1, 1942); *Comolite Corp. v. Davidovicz*, 111 F. (2d) 121 (CCA 2, 1940); *Aero Spark Plug Co. v. BG Corp.*, 130 F. (2d) 290 (CCA 2, 1942); *Western States Mach. Co. v. SS Hepworth Co.*, 147 F. (2d) 345 (CCA 2, 1945); *E. J. Brooks Co. v. Klein*, 114 F. (2d) 955 (CCA 3, 1940); *Smith v. Carter Carburetor Corp.*, 130 F. (2d) 555 (CCA 3, 1942); *Scott & Williams v. Whisnant*, 126 F. (2d) 19 (CCA 4, 1952); *Wheeling Stamping Co. v. Standard Cap & Molding Co.*, 155 F. (2d) 6 (CCA 4, 1946); *Phillips Petroleum Co. v Shell Oil Co.*, 166 F. (2d) 384 (CA 5, 1948); *Paul E. Hawkinson Co. v. Wilcoxen*, 149 F. (2d) 471 (CCA 6, 1945); *Highway Appliances Co. v. American Concrete Expansion Joint Co.*, 93 F. (2d) 113 (CCA 7, 1937); *Emery v. Schumann*, 111 F. (2d) 209 (CCA 7, 1940); *Curtis Cos. v. Master Metal Strip Service*, 125 F. (2d) 690 (CCA 7, 1942); *Everest v. Duke*, 139 F. (2d) 22 (CCA 7, 1943); *Hydraulic Press Mfg. Co. v. Williams, White & Co.*, 165 F. (2d) 489 (CCA 7, 1947); *Vischer Products Co. v. National Pressure Cooker Co.*, 178 F. (2d) 125 (CCA 7, 1949); *Strong-Scott Mfg. Co. v. Weller*, 112 F. (2d) 389 (CCA 8, 1940); *Payne Furnace & Supply Co. v. Williams-Wallace Co.*, 117 F. 2d 823 (CCA 9, 1941); *Kugelman v. Sketchley*, 133 F. (2d) 426 (CCA 9, 1943); *Schnitzer v. Calif. Corrugated Culvert Co.*, 140 F. (2d) 275 (CCA 9, 1944); *Himes v. Chadwick*, 199 F. (2d) 100 (CA 9, 1952); *Texas Co. v. Anderson-Prichard Refining Corp.*, 122 F. (2d) 829 (CCA 10, 1941); *Decker v. Federal Trade Commission*, 176 F. (2d) 461 (App. D. C., 1949); *Smith v. Kingsland*, 178 F. (2d) 26 (App. D. C., 1949).

claim would "justify resort to the specifications." In *General Electric Co. v. Wabash Appliance Corp.*, 304 U. S. 364 (1938), the Court assumed that "in a proper case a claim may be upheld by reference to the descriptive part of the specification in order to give definite content to elements stated in the claim in broad or functional terms." In *Altoona Theatres v. Tri-Ergon Corp.*, 294 U. S. 477 (1935), the patentee sought to compound a claim for a combination which was not claimed in his patent. In the case at bar, the claim covers all the elements of plaintiff's process. In *United Carbon Co. v. Binney & Smith Co.*, 317 U. S. 228 (1942), the Court assumed "that the claims must be read in the light of the patent specification," but found the description in the specification was "almost entirely in terms of function."

We believe the claim of the patent in suit is sufficiently definite on its face. If, however, the terms "detergent" and "antistatic agent" (found in any dictionary) are regarded as indefinite, they are defined in the specifications of the patent. The courts have always held that the claims of a patent must be interpreted in the light of the specifications. As has frequently been said, "Every patentee may be his own lexicographer." *Dennis v. Pitner*, 106 F. (2d) 142 (CCA 7, 1939); *Chicago Steel Foundry Co. v. Burnside Steel Foundry Co.*, 132 F. (2d) 812 (CCA 7, 1943).

3. Importance of the Question.

The question presented in this petition is obviously of great importance in the administration of the patent laws. In most infringement actions, it is necessary to construe the claims of the patent. If the courts refuse to construe patent claims in the light of the specifications (as was done by the Court below), a large percentage of the patents which have been issued will be invalid. Again we

say the specification limits and interprets as well as defines the invention claimed. **The specification is the public's protection.**

CONCLUSION.

As shown in the above argument, this petition for certiorari should be granted because of the importance of the question presented and the conflict of the decision below with decisions by this Court and other Courts of Appeals.

Respectfully submitted,

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APPENDIX.

DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

(December 21, 1959.)

Before GARDNER and VOGEL, Circuit Judges, and MICKELSON, District Judge.

VOGEL, Circuit Judge.

This appeal arises out of a suit brought by the appellant, The Davies-Young Soap Company, against the appellee, Nu-Pro Manufacturing Company, for patent infringement. The District Court, Judge Harper presiding, found it unnecessary to determine the question of infringement as it held appellant's patent invalid on the grounds that it lacked novelty and invention and because "* * * it fails particularly to point out and distinctly to claim the subject matter regarded as to the invention." Judgment was accordingly entered for the appellee, from which result appellant appeals.

Appellant is the assignee of United States Letters Patent No. 2,729,576, granted to Ralf B. Trusler on January 3, 1956, entitled "METHOD OF DRY CLEANING FABRIC AND SIMULTANEOUSLY RENDERING THE SAME ANTISTATIC." The object to be accomplished by rendering clothes antistatic was to prevent them from attracting lint and dirt and from adhering to the bodies of their wearers. The patent contained a single claim, covering,

> "The method of dry cleaning fabrics and clothing and simultaneously rendering the same antistatic, which comprises washing the fabric and clothing with dry cleaning solvent having from 0.2% to 10% by weight of a detergent dissolved therein, and then rinsing the fabric and clothing with a dry cleaning solvent

> having from 0.02% to 5.0% by weight of an antistatic agent dissolved therein, the antistatic agent being applied to the fabric and clothing in the presence of detergent carried thereby from the washing."

Appellant profited from the patented process by manufacturing and marketing a solution known as BUCKEYE CLEAN-CHARGE, which, when used in accordance with stated directions, contained amounts of detergent and anti-static agents falling within the patent percentages and produced the desired anti-static condition.

As early as May, 1952, appellee compounded and marketed a dry cleaning detergent, known as CHARGIT, which, according to appellant's own testimony and exhibits, was also used in a manner so as to contain amounts of detergent and anti-static agents coming within the percentage ranges specified in the patent claim. Appellant, however, in order to avoid the defense that its patent has been anticipated by prior art, contends that this use of CHARGIT is immaterial because, again according to its own tests, the solution was nonetheless still not used in amounts sufficient to render the garments cleaned with it permanently anti-static. These facts alone compel a finding that appellant's patent was invalid.

35 U. S. C. A. § 112 sets forth the requirements for a patent application and concludes by stating:

> "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention."

Appellee's product, CHARGIT, clearly conformed to the directions of the patent claim, yet admittedly it failed to achieve the result of the alleged invention. Manifestly, then, the claim does not meet the statutory requirement of fully stating the process which appellant claims to be

its invention. *United Carbon Co. v. Binney & Smith Co.*, 1942, 317 U. S. 228; *Standard Brands v. Yeast Corp.*, 1939, 308 U. S. 34; *L. L. Antle & Co. v. Genovese*, 8 Cir., 1957, 245 F. 2d 215; *Standard Oil of California v. Tide Water Associated Oil Co.*, 3 Cir., 1945, 154 F. 2d 579.

Appellant seeks to avert this conclusion of invalidity by contending that:

> "Dr. Trusler's contribution was not simply dumping a quantity of an antistatic agent in with the solvent and detergent in the washer, but it involved consideration and reconcilation of a number of requirements for the detergent and antistatic agent, * * *."

which assertion is followed by a list of some five additional elements of the patented process, all of which are allegedly stated in detail in the patent specifications. These include the condition that the detergent be "compatible" with the anti-static agent, that both be soluble in hydrocarbon and chlorinated solvents, that the anti-static agent be capable of being absorbed by the fabric fibres so that it will not be rinsed off by the solvent and detergent, and that the anti-static agent not be adversely affected by heat nor, itself, have any adverse effect on the color or character of the fibres. However, even assuming that these added requirements, when considered along with the rest of the patent, do accurately and adequately describe alleged inventive process, the patent must still fall short of validity.

It is well established that the claims, and not the specifications, is the measure of the inventive monopoly and deficiencies of the former cannot be cured by any terms of the latter. *Altoona Theatres v. Tri-Ergon Corp.*, 1935, 294 U. S. 477; *Freedman v. Friedman*, 4 Cir., 1957, 242 F. 2d 364; *Aluminum Co. of America v. Thompson Products*, 6 Cir., 1941, 122 F. 2d 796; *In re Cresswell*, C. C. P. A., Patents, 1951, 187 F. 2d 632; *Application of Custer*, C. C. P. A.,

Patents, 1949, 173 F. 2d 226; *In re Gillis*, C. C. P. A., Patents, 1939, 102 F. 2d 902; *Belden v. Air Control Products*, D. C. W. D. Mich., 1956, 144 F. Supp. 248; *Flakice Corp. v. Liquid Freeze Corp.*, D. C. N. D. Cal., 1955, 130 F. Supp. 471. Thus, in *Graver Mfg. Co. v. Linde Co.*, 1949, 336 U. S. 271, 276-277, the Supreme Court of the United States stated:

> "The difference between the District Court and the Court of Appeals as to these findings comes to this: The trial court looked at claims 24 and 26 alone and declined to interpret the terms 'silicates' and 'metallic silicates' therein as being limited or qualified by specifications to mean only the nine metallic silicates which had been proved operative. The District Court considered the claims therefore were too broad and comprehended more than the invention. The Court of Appeals considered that because there was nothing in the record to show that the applicants for the patent intended by these claims to assert a monopoly broader than nine metallic silicates named in the specifications, the court should have construed the claims as thus narrowed and limited by the specifications.
>
> The statute makes provision for specification separately from the claims and requires that the latter 'shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery.' It would accomplish little to require that claims be separately written if they are not to be separately read. While vain repetition is no more to be encouraged in patents than in any other documents, and claims like other statements may incorporate other matter by reference, their text must be sufficient to 'particularly point out and distinctly claim' an identifiable invention or discovery. We have frequently held that it is the claim which measures the grant to the patentee. See, for example, *Milcor Steel Co. v. Fuller Co.*, 316

U. S. 143, 145; *General Electric Co. v. Wabash Co.*, 304 U. S. 364, 369; *Altoona Theatres v. Tri-Ergon Corp.*, 294 U. S. 477, 487. While the cases more often have dealt with efforts to resort to specifications to expand claims, it is clear that the latter fail equally to perform their function as a measure of the grant when they overclaim the invention. When they do so to the point of invalidity and are free from ambiguity which might justify resort to the specifications, we agree with the District Court that they are not to be saved because the latter are less inclusive."

Similarly, in *General Electric Co. v. Wabash Appliance Corp.*, 1938, 304 U. S. 364, 374-375, the court held a patent invalid on its face, after first observing that:

"Finally, the product claims may not be saved by a limitation to products produced in accordance with the process set out in the specification. * * * unless the claim uses language explicitly referring to the method of preparation, or describing the product in phrases suggestive of that process, to save the product claim in this fashion would constitute an improper importation into the claim of a factor nowhere described there. The claims in suit seek to monopolize the product however created, and may not be reworded, in an effort to establish their validity, to cover only the products of the process described in the specification, or its equivalent."

The trial court having correctly found appellant's patent invalid by reason of the indefiniteness of its claim, it is unnecessary for this court to consider whether or not appellant's claimed invention was anticipated by prior art or publication. The judgment of the court below is, therefore, affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

OPINION OF ROY W. HARPER, DISTRICT JUDGE.

UNITED STATES DISTRICT COURT,
Eastern District of Missouri,
St. Louis 1.
October 3, 1958.

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Re: Davies-Young v. Nu-Pro Mfg. Co.—No. 10622(2)

Gentlemen:

I had hoped to write a memorandum opinion in the above styled case, but court commitments have interfered to the extent that I have not been able to do so, and it appearing that I am going into a heavy trial schedule in the immediate future I do not want to hold this matter under submission any longer. For that reason I am going to dispose of it by writing this letter rather than a memorandum opinion.

First, I shall deal with plaintiff's motion to strike certain proof from the record regarding prior users. When the defendant gave formal notice as to the patents and publications it intended to use, the plaintiff filed a motion

to require the defendant to elect a reasonable number, but after the defendant's counsel reduced the number plaintiff's motion was withdrawn.

At the trial the defendant did not introduce all of the patents of which it had given plaintiff notice, but did stress prior invention and prior use as to which no statutory notice had been given. From the written records, depositions, written memoranda and other documents and letters in the file, plaintiff was well aware that proof of prior uses would be made at the trial. The chief complaint which plaintiff really has is that it received too much notice rather than not enough. The court is of the opinion that the defendant gave plaintiff proper notice as required by law and that the plaintiff's motion to strike should be overruled.

With respects to the merits of the case, the first question for the court to determine is whether or not the plaintiff's patent is valid. Your familiarity with the patent in question makes it needless to repeat it here, but anti-static agents have been standard constituents of dry cleaning detergents for many years. In fact, the plaintiff states that the defendant's product when used in less than a 3% concentration does not infringe. This, then, would require outside experiment in order to determine whether or not the patent was infringed, and under *Standard Brands, Inc. v. National Grain Yeast Corp.*, 308 U. S. 34, and *United Carbon Co. v. Binney and Smith Co.*, 317 U. S. 228, the patent is rendered void.

Further, plaintiff claims that it has the sole right to use any ingredient that is the slightest anti-static. This is too broad a claim and is much broader than any inventive concept or contribution to the art of dry cleaning. The patent itself is for a process in which an unpatentable mixture is used, and in such instances it is vitally im-

portant to specify the mixture with some certainty. As was stated in *Antle v. Genovese*, 245 F. 2d 215, the purported patent does not describe or define the process so that others will be enabled to ascertain its limits. As set out by the court in the *Antle* case, l. c. 222: "More especially, reasonable certainty was required to inform the public of the limits of the monopoly asserted."

The patent in question, in the court's opinion, does not inform the public of the limits, the limits set out being entirely too indefinite, and even if not taught by the prior art, it would fail as being too broad, for among other things it fails to inform the public what to do so as not to infringe. A number of publications were introduced, such as a publication of the Atlas Powder Company, bulletins of Armour Chemical Division and DuPont Chemical Company, an article in Industrial and Engineering Chemistry, and an article in Chemical Week, all of which indicate to the court the lack of novelty in the invention, it being taught by the prior art.

Further, the testimony disclosed that the defendant's product CHARGIT had been on sale and in use in this country since May of 1952, and a number of dry cleaning establishments were operating and using CHARGIT in 1952. Since CHARGIT had been in use in the cleaning trade before the plaintiff applied for its patent, this provides an added reason for the patent being invalid.

The court is accordingly holding that the patent is invalid, and in view of that fact it is not necessary to pass on the question of infringement. Attorneys for the defendant will prepare the findings of fact, conclusions of law and judgment to be entered by the court and submit copies thereof to the attorneys for the plaintiff.

Very truly yours,

ROY W. HARPER.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

December 21st, 1959.